Fire Tools and Enforcement at Homesite Creek

Complaint Investigation 980160

April 1999

FPB/IRC/15

Table of Contents

THE INVESTIGATION 1

INVESTIGATION FINDINGS 2

Compliance with Code Requirements 2

Fire Fighting Equipment 2

Signs 3

Appropriateness of Government Enforcement 4

Fire Tools 4

Prohibited Operations 5

CONCLUSIONS 6

The Investigation

In 1994, the Ministry of Forests Small Business Forest Enterprise Program (SBFEP) in the Sunshine Coast Forest District started planning to sell the right to harvest timber in a 26.8 hectare cutblock in a rural residential area near Homesite Creek. The site is on a peninsula between the communities of Secret Cove and Halfmoon Bay, approximately 20 km from Sechelt.

Timber sale licence A48267 is located immediately adjacent to a rural-residential area, and forest practices there have met with opposition from local residents.[1]

On the morning of August 11, 1998, the complainant discovered two fallers cutting a road right-of-way within the licence area. The complainant believed that operations were not permitted in the cutblock at that time, and that the fallers did not have the required fire fighting equipment with them on site and close at hand. The fire danger class was rated as "high" for August 11th.

At approximately 8:35 am, the complainant telephoned a compliance and enforcement supervisor at the Ministry of Forests and advised him that operations were taking place in the cutblock. The supervisor traveled to the site and arrived at approximately 10:15 am. He found protesters and two reporters at the entrance, and the two fallers cutting the road right-of-way.

The supervisor inspected the worksite, and completed a "Forest Fire Prevention and Suppression Regulation Inspection Report." He also advised the fallers that operations had to stop by 1:00 pm due to the high fire hazard. The supervisor left the site and returned at 4:30 pm, but found no one there.

The complaint was filed with the Board the next day, August 12, 1998. The complaint stated that:

- two fallers had contravened the *Forest Fire Prevention and Suppression Regulation* because they were working without the required fire fighting equipment on site,
- signs warning the public of falling activity were not present at all access points around the block,
- government enforcement was inappropriate because the Ministry of Forests had failed to ensure that the fallers had the necessary fire fighting equipment on site, and
- operations were taking place despite the fact that the complainant had been assured that operations would not be allowed until a possible trespass had been investigated.

The investigation addressed two main questions:

---

[1] This is the Board's third complaint investigation involving the timber sale. For details on the previous two complaints, please refer to the Board's investigation reports FPB/IRC/05, *Approval of Silviculture Prescription for Timber Sale A48267 near Homesite Creek, Halfmoon Bay* and FPB/IRC/14, *Logging Plan Approval and Enforcement at Homesite Creek.*

- Did the licensee comply with the requirements of the *Forest Practices Code of British Columbia Act* and its related regulations (the Code)?
- Was government enforcement of the requirements of the Code appropriate?

The Board investigation focused on the specific issues of fire tools and government enforcement of fire tool requirements, signs, and whether operations took place within the timber sale licence area when not allowed by the Ministry of Forests.

The investigation did not examine the alleged unauthorized harvesting because the issue was already under investigation by the Ministry of Forests. The Board considered the ministry investigation to be an existing administrative procedure that was appropriate to deal with the issue in the circumstances.

Investigation Findings

Compliance with Code Requirements

Fire Fighting Equipment

Two fallers were working on a road right-of-way within the cutblock. They were using chainsaws and had gas cans in the woods. The *Forest Fire Prevention and Suppression Regulation* requires that the following fire fighting tools must be kept at the worksite if the number of workers is three or less:

- one round nosed shovel
- one pulaski or mattock
- one hand-tank pump containing at least 18 litres of water

The regulation also requires that a person must not operate a small engine - for example, a chainsaw - unless he or she has a fire extinguisher charged with at least 225 grams of fire extinguishing chemical available.

The complainant stated that one of the fallers had a small fire extinguisher on his belt. A shovel, mattock, and a hand-tank pump were located in a truck at the parking area. The complainant understood from others that the hand-tank pump was locked inside the cab of the truck. The truck was parked approximately 400 metres, over rough terrain, from where the fallers were working.

The Ministry of Forests compliance and enforcement supervisor conducted an inspection of the worksite on August 11, 1998 and found that one worker was wearing a regulation fire extinguisher on his belt, and the other worker had a similar extinguisher in his backpack. The supervisor instructed the worker to place the fire extinguisher on his belt.

Next, the supervisor inspected the truck and found a shovel, two mattocks, and a regulation hand-tank pump inside the bed of the truck. He shook the hand-tank pump to ensure that it contained enough water. The supervisor found that operations were in compliance with the regulation, and he completed an inspection report to that effect.

The compliance and enforcement supervisor's and the complainant's inventory of fire tools differ by one fire extinguisher and a mattock. Despite this difference, it is apparent that the required fire equipment was at the worksite. The complainant was not able to see the second fire extinguisher inside the backpack and understood from others at the site that there was only one mattock in the bed of the truck. Nevertheless, the regulation only requires one mattock, and at least one mattock was available.

The complainant also felt that the fire fighting equipment was located too far away from the workers and their fuel to be of any use if a fire started. A distance of four hundred metres over rough terrain is significant, especially during a high fire hazard period. The regulation requires that the tools be located at the worksite. "Worksite" is defined as an area of land within which an operation relating to timber harvesting is performed. In this case, the area in which harvesting was occurring was on a road right-of-way within the timber sale licence area and the area covered by the associated road permit. The truck was not parked within the cutblock but was on a landing within the boundaries of the road permit, immediately beside the timber sale licence boundary. It was parked as close as possible to where the fallers were working. Therefore, the truck was parked at the worksite.

Finding 1:

The fire tools required by the *Forest Fire Prevention and Suppression Regulation* were available at the worksite on August 11, 1998.

Signs

The complainant stated that there was one sign at the parking area and one on Brooks Road warning the public that forestry operations were taking place in the area. The complainant believes that there should have been additional signs at all access points to the block, including various trails that cross the area.

On January 22, 1998, a Ministry of Forests employee noted in a harvest inspection report that signs warning of falling activity had been posted satisfactorily at access points to the cutblock. A Workers Compensation Board occupational safety officer noticed remnants of the signs throughout the cutblock during his inspections that winter. By August 11th, only two of the signs remained intact.

The Code does not require that warning signs be placed at entry points to a cutblock. As a result, this matter would appear to be outside of the jurisdiction of the Board to investigate. However, if any operational plans or approvals required signs to be posted, the matter could be within the jurisdiction of the Board. The Board chose to investigate the sign issue based on that possibility.

The investigation revealed that there was no requirement in any operational plan or approval that warning signs be posted.

> **Finding 2:**
>
> The Code does not require the placement of warning signs at entry points to a cutblock. Furthermore, there was no requirement in any operational plan or approval from the Ministry of Forests that required warning signs to be posted.

The placement of warning signs in or around a cutblock was a requirement of Workers' Compensation Board legislation. The *Occupational Health and Safety Regulation* requires that fallers must ensure that other workers are more than two tree heights away from the tree to be felled. According to the occupational safety officer responsible for the area of the complaint, signs have become an accepted method of warning others of falling activity and are often posted at the entrances to cutblocks. The matter of signage is within the jurisdiction of the Workers' Compensation Board.

Appropriateness of Government Enforcement

The complainant believes that government enforcement of Code requirements was inappropriate because:

- the Ministry of Forests failed to ensure that the fallers had the required fire fighting equipment on site, and
- work within the cutblock was prohibited by the Ministry of Forests until an alleged unauthorized harvest of timber was investigated.

Fire Tools

In response to the complainant's concerns about fire tools on the morning of August 11, 1998, a Ministry of Forests compliance and enforcement supervisor immediately traveled to the site and conducted an inspection that morning. The supervisor found that all the required fire tools were available at the worksite.

No further operations took place in the cutblock until September 2, 1998. On September 2nd, another ministry employee conducted a harvest inspection of the cutblock, including a fire tool inspection. He found that all required tools were at the worksite and in good working order, and he completed a report to that effect.

The two fire tool inspections revealed no problems. The Board finds that the ministry's enforcement of fire tool requirements was extremely prompt in response to public concerns, and was sufficiently frequent to detect any lack of required fire tools at the site.

Finding 3:

The Ministry of Forests enforcement of fire tool requirements was appropriate.

Prohibited Operations

The complainant stated that a Ministry of Forests assistant deputy minister and an operations manager assured her that operations would not be permitted within the timber sale licence until an alleged unauthorized harvest of timber (known as a "trespass") had been investigated. The complainant further stated that the ministry staff had the opportunity to issue a "stop work order," but failed to do so. Ministry staff discovered the alleged trespass on July 10, 1998.

The assistant deputy minister recalled speaking with the complainant on the telephone, and indicating that a trespass would not normally shut down a harvesting operation. The assistant deputy minister also indicated that any questions regarding the sale should be directed to the district, since the district is responsible for operational matters. The assistant deputy minister did not recall stating that operations would be prohibited until an investigation was completed.

Similarly, the operations manager did not recall making such a statement to the complainant. However, on July 15, 1998 he did write a letter to the licensee regarding the alleged trespass. The letter stated that harvesting must not commence until the boundaries were re-established and marked in the field. In the past, flagging tape and painted boundaries had been obscured or removed by unknown persons.

The operations manager recalled advising the complainant that operations would not proceed until the boundaries were re-marked, but denied saying that operations would be prohibited until an investigation had taken place.

Faced with the conflicting recollections of the complainant and ministry staff, the Board reviewed the basis for a stop work order. A stop work order can be issued when an official believes that a contravention has occurred or might be occurring. In this case, there was no reason to believe that a contravention had occurred *within* the timber sale licence. Therefore, the ministry did not have the authority to issue an order to stop all work within the block. A stop work order could only have been issued to prevent further operations outside the block in the area of the trespass, or on the perimeter of the block when a trespass was possible.

When the alleged trespass was discovered on July 10th, a ministry employee completed a harvest inspection report that instructed the licensee to stop harvesting operations until the boundary was re-marked. A copy of the report was given to the licensee. The ministry followed up with identical instructions in their letter of July 15, 1998. The Board considers that the ministry did what was logical, expected and normal practice in similar circumstances. The assistant deputy minister's and the operations manager's recollection of conversations with the complainant are consistent with what the Board considers to be standard procedure.

The trespass did not give the ministry the authority to issue a stop work order for all operations within the timber sale licence area; therefore, it is logical to conclude that operations were never prohibited. The Board cannot comment on the appropriateness of government enforcement of an order that was never made.

Finding 4:

The Ministry of Forests did not have the authority to issue a stop work order to the licensee for operations within the timber sale licence area, and operations were never prohibited. Ministry staff acted appropriately when they instructed the licensee to remark the boundaries to ensure that the alleged trespass did not continue.

Conclusions

The Board reached the following conclusions regarding the issues investigated in this complaint:

1. The required fire fighting tools were available at the worksite on August 11, 1998 when fallers were working within the timber sale area. The licensee complied with the requirements of the *Forest Fire Prevention and Suppression Regulation.*

2. The Code does not require that warning signs be placed at entry points to cutblocks, thus there was no contravention of the Code. Signage is regulated by the *Occupational Health and Safety Regulation* under the *Workers' Compensation Act.*

3. The Ministry of Forests conducted two fire tool inspections on two days of operations and found that operations were in compliance with the requirements of the *Forest Fire Prevention and Suppression Regulation.* Government enforcement of fire tool requirements was extremely prompt and appropriate.

4. The Ministry of Forests did not have the authority to issue a stop work order for all operations within the licence area, and as a result operations were not prohibited.

5. The Ministry of Forests acted appropriately when they responded to the possible trespass by instructing the licensee to stop falling operations until the boundary had been remarked.